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State of New Jersey
Department of Labor and
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PO Box 110
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08625-0110

RE: *Proposed Amendments: N.J.A.C. 12:235-3.2*
Motions for Temporary Disability and/or Medical Benefits

Attached please find the above-referenced matter which was published in the Monday, November 7, 2005 *New Jersey Register*.

If you have any questions, please contact David Fish, Regulatory Officer at 609-292-2789.

(a)

DIVISION OF WORKERS' COMPENSATION**Motions for Temporary Disability and/or Medical Benefits****Proposed Amendments: N.J.A.C. 12:235-3.2**

Authorized By: Thomas D. Carver, Commissioner, Department of Labor and Workforce Development.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 34:15-64.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2005-419.

A public hearing on the proposed amendments will be held on the following date at the following location:

Monday, December 12, 2005
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor and Workforce Development
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 292-2789 if you wish to be included on the list of speakers.

Submit written comments by January 6, 2006 to:

David Fish, Regulatory Officer
Office of Legal and Regulatory Services
PO Box 110, 13th Floor
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Fax: (609) 292-8246

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The agency proposal follows:

Summary

The Department is proposing to amend N.J.A.C. 12:235-3.2(b)2 so as to insert the words "or the" in the first sentence of the paragraph between the words "petitioner" and "petitioner's attorney." The Department is also proposing that the word "and" within the first sentence of the paragraph between the words "attorney" and "report(s)," be replaced with the phrase "as well as the." The proposed insertion of the words "or the" is intended to make clear that either the petitioner or the petitioner's attorney may complete affidavits or certifications in support of a motion for temporary disability or medical benefits. Without the "or the" between "petitioner" and "petitioner's attorney," the Department has reason to believe that the phrase might be misconstrued to mean that both the petitioner and petitioner's counsel must complete affidavits or certifications in support of such a motion. With regard to the second proposed amendment regarding substitution of the phrase "as well as the" for the word "and," this would be a stylistic change which would have no impact on the actual meaning of the rule.

In addition, N.J.A.C. 12:235-3.2(b)2 currently states in pertinent part that a physician's report submitted in support of a motion for temporary disability and/or medical benefits must contain the medical diagnosis and the specific type of treatment sought. The Department is proposing to amend N.J.A.C. 12:235-3.2(b)2 so as to indicate that the physician's report must also state the following: (1) the causal relationship of the medical condition to work, and (2) the specific type of diagnostic study or referral to a specialist sought by the petitioner, if any. As proposed, the amended sentence would state that the physician's report must contain the medical diagnosis, the causal relationship of the medical condition to work, and the specific type of diagnostic study, referral to a specialist or treatment being sought.

At the core of the workers' compensation system is the principle that in order for an injury to be compensable it must arise "out of and in the course of employment." N.J.S.A. 34:15-7. Therefore, it is a prerequisite to any sort of recovery under the workers' compensation law, including recovery for temporary disability and/or medical benefits, that the petitioner must establish the work-relatedness of his or her injury. In

practice, if a motion for temporary disability and/or medical benefits comes before a workers' compensation judge under existing N.J.A.C. 12:235-3.2 supported by a physician's report which does not address whether the petitioner's injury arose "out of and in the course of employment," the workers' compensation judge may require that a physician's report be obtained which addresses that issue. Similarly, if the petitioner is seeking a diagnostic study(ies) (for example, X-rays or MRIs) or referral to a specialist, then submission to the workers' compensation judge of a physician's report identifying the specific type of diagnostic study or referral to a specialist sought is necessary in order for the judge to determine whether the petitioner has provided sufficient medical evidence in support of the motion. It is only after having obtained this information that the workers' compensation judge is able to make an informed decision regarding the merits of the motion.

It is the Department's belief that by explicitly including these requirements for the notice of motion for temporary disability and/or medical benefits within N.J.A.C. 12:235-3.2(b), the adjudication of such claims would be simplified and, therefore, the time required for the processing of such claims shortened.

Prior to publishing this proposal, the Department consulted with and received no objections from the following groups: (1) the New Jersey State Bar Association, (2) the New Jersey Advisory Council on Safety and Health, (3) the Workplace Injury Litigation Group - N.J., and (4) the Commissioner of Labor and Workforce Development's Advisory Council on Workers' Compensation.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

As indicated above, the Department believes that the proposed amendments to N.J.A.C. 12:235-3.2 would speed the adjudication of motions for temporary disability and/or medical benefits. Such a change would not only benefit petitioners, who would obtain their benefits (when warranted) without undue delay, but would also benefit respondents, who would be spared the unnecessary expenditure of additional time and resources which occurs when the workers' compensation judge who is hearing a motion for temporary disability and/or medical benefits must order the reexamination of a petitioner in order to address outstanding issues such as whether the injury arose "out of and in the course of the employment," or whether there exists demonstrable objective medical evidence of the nature of the injury; for example, diagnostic tests like X-rays and MRIs, as opposed to records of the petitioner's subjective complaints.

Economic Impact

As indicated above, the Department believes that the proposed amendments would result in time and labor savings to all participants in the workers' compensation system, including the workers' compensation judges, attorneys and parties, since they (the amendments) would minimize unnecessary delay in the adjudication of motions for temporary disability and/or medical benefits.

Federal Standards Statement

The proposed amendments are governed by N.J.S.A. 34:15-1 et seq., and are not subject to any Federal standards or requirements. Therefore, a Federal standards analysis is not required.

Jobs Impact

The proposed amendments would not result in the generation or loss of jobs in the State.

Agriculture Industry Impact

The proposed amendments would not have an impact on the agriculture industry of the State.

Regulatory Flexibility Analysis

The proposed amendments alter the required content of physician(s) report(s) supporting a notice of motion for temporary disability or medical benefits. Physicians providing such reports may be small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The added requirements are that the report includes the causal relationship of the medical condition to work, and the specific type

of diagnostic study or referral to specialist being sought. The Department anticipates that physicians will incur no additional costs in providing this information, nor will any professional services be needed to do so.

Smart Growth Impact

The proposed amendments would not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

12:235-3.2 Motions for temporary disability and/or medical benefits

(a) (No change.)

(b) The notice of motion for temporary disability or medical benefits shall be on a form prescribed by the Division and shall contain:

1. (No change.)

2. Affidavits or certifications made in personal knowledge by the petitioner[,] or the petitioner's attorney [and], as well as the report(s) of a physician(s) stating the medical diagnosis, **causal relationship of the medical condition to work**, and the specific type of **diagnostic study, referral to specialist**, or treatment being sought, and, if available, an itemized bill and report of the treating physicians or institutions or both for which services past, present and future, petitioner is seeking payment and such other evidence as shall relate to the petitioner's claim for temporary disability and/or medical treatment; and

3. (No change.)

(c)-(j) (No change.)